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DEPARTMENT FOR WHA/CEN/BRIGHAM

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TAGS: [PGOV](#) [PREL](#) [PM](#) [POL](#) [SPECIALIST](#)

SUBJECT: Panama's legislature approves constitutional reform package in record time; concurrence by next legislature required

REF: Panama 01764

C O R R E C T E D COPY OF PANAMA 1957 - TEXT

Summary/Comment: Reform package surmounts apathy

1. (SBU) Although many thought them dead a month ago, in only 21 calendar days Panama's Legislative Assembly approved a package of 67 constitutional reforms that most Panamanians view favorably. They began as legislator Jerry Wilson's 90-page proposal on behalf of the opposition Democratic Revolutionary Party (PRD). (NOTE: The PRD will control the presidency and a majority of legislative seats after September 1. END NOTE.) The final package incorporates additions from ruling Arnulfista Party legislators, plus input from others who approached the Government Committee before plenary discussions. Per Article 308 of Panama's constitution, President-elect Torrijos (PRD) must present the reform package to the newly elected legislature immediately after taking office on September 1. The legislators who take over on September 1, must then ratify the reform package that their predecessors approved for it to be implemented. We expect this to happen.

2. (SBU) The poorly attended July 5-28 "extraordinary sessions" captivated public attention much less than the USG revocation of a former cabinet minister's tourist visa for corruption. One normally vocal advocate of constitutional reform told PolOffs that she gave up trying to contribute to the debate because her concerns were not reflected in changes made to the original proposal. Several legislators have used the reform process to air petty internal party disputes inappropriate for a plenary debate in the Legislative Assembly. End Summary/Comment.

What's changed -- the short version

3. (SBU) Only about 20 of the 67 reforms are substantive. Most just refine previous Articles with updated terminology, clearer drafting and formatting, and better punctuation. Substantive reforms go from reducing the number of elected officials to establishing a "Tribunal de Cuentas." Among other things, the reform package:

- reduces the number of elected officials and the inter-regnum period between administrations,
- reduces legislative immunity,
- prohibits the President from appointing Supreme Court Justices directly from his/her Cabinet or the legislature,
- mandates a referendum to ratify any plan for Canal expansion,
- maintains the Comptroller General's right to exercise pre-disbursement control over government expenditures, and
- defines a mechanism for convoking a Constituent Assembly (Constituyente). (NOTE: Closed-door PRD and Arnulfista negotiations led to this response to the most consistent civil society constitutional reform demand. The new text prohibits a Constituyente from cutting the term of elected officials, alleviating PRD fears that it could be hurt if one were convoked during the next five years. END NOTE.)

4. (SBU) The constitutional reform package calls for several cuts to reduce the GOP payroll as well as government bloat, such as: (i) cutting the number of Vice Presidents from two to one, (ii) cutting the number of legislative seats to 71 (fixed) from 78 (variable, tied to population), (iii) reducing the number of legislators'

alternates from two to one each, and (iv) reducing the number of Deputy Mayors from two to one. If the reforms were implemented, the reduced depth chart would take effect from 2009 (the next election) forward.

15. (U) Most Panamanians welcome elements of the reforms that impact the terms served by elected officials. The reforms would cut the transition period between administrations in half to two months, making Inauguration Day July 1 instead of September 1. Legislative sessions would be from January 2-April 30, and July 1-Oct 31 (instead of March 1-June 30 and Sept 1-Dec 31). Under the reformed constitution, all officials elected on May 2, 2004 (from President-elect Torrijos down) would finish their terms two months "early" on June 30, 2009. The reforms stipulate that the Executive must submit the national budget to the Assembly within the first legislative sessions of the year instead of in October.

Recount of legislative debate

16. (SBU) From July 5-19, amidst a lamentable hush from civil society, the Assembly discussed constitutional reforms in first debate sessions that barely made a quorum. On average, 40 of 71 sitting legislators approved each of 71 proposed reforms during the first of three required debates. A key Assembly staffer expressed concern to PolOffs about the lack of commitment and true interest by the majority of the legislators. "Only about 20% of the legislators are following the debate and the rest are sending their alternates (suplentes) to attend sessions," he claimed. Rumors of secret negotiations between the Moscoso administration and the PRD overshadowed plenary discussions and exasperated proponents of a Constituyente, who called for a new presidential decree ending debate.

17. (SBU) After a two-day impasse, President Moscoso agreed to extend "extraordinary" legislative sessions to permit the required second and third rounds of debate. Moscoso used Catholic Church and the University of Panama complaints as a pretext to stall, but internal Arnulfista spats were the real cause for the delay. Only 67 reforms passed second and third debates. Of note, the Assembly eliminated a contentious reform submitted by the Arnulfistas that would have allowed legislators to summon Justices to be questioned on court-related issues. Plenary consensus on the latter provision was impossible even though it barred Justices being summoned based on specific decisions. Chief Justice Cesar Pereira Burgos warned Assembly President Jacobo Salas after first debate that such a reform would violate the separation of powers.

Legislative immunity reduced

18. (SBU) One of the most welcome reforms was the reduction of legislative immunity, considered by many to be a shield to protect legislators involved in unethical and/or illegal actions. If the reform is implemented, the Supreme Court could investigate legislators without Assembly clearance. Except for one notorious 1994 case when a legislator was caught in the act bribing businessmen, all other requests from the Public Ministry to investigate legislators have been rejected. Sadly, the list of Assembly refusals to waive immunity includes Carlos Afu, who waved what he claimed was bribe money in the air on national television.

Changes affect the Comptroller General

19. (SBU) A passionate appeal from several former Comptrollers General (Reftel) saved pre-disbursement control ("control previo") from the chopping block. A revised Article 276 would establish a "Tribunal de Cuentas" to investigate, prosecute and rule on mal/misfeasance in the management of government accounts. Currently, the CG him/herself has those roles, but the reforms dictate that the CG would have to submit the cases to a special court. If implemented, the reform mandates legislation to define the composition and operations of such a court, plus the pre-requisites for its magistrates.

Changes to the Judicial Branch

10. (SBU) The most publicized judicial reform would forbid appointments to the Supreme Court of anyone currently holding a legislative or Cabinet seat. The reform targets President Moscoso's most recent appointments to the Court,

but would allow Presidents (including Torrijos) to appoint individuals who have served as legislators or cabinet members in previous administrations. Rumored future Justices include hardline PRDs who President-elect Torrijos wants to reward for their service to the party, to distance from his administration, or both.

11. (SBU) Another reform would require that alternates ("suplentes") for Justices be appointed from within the judicial branch, whereas currently the President appoints them (like the principals). (NOTE: Suplentes are often active members of prominent law firms, not full time judicial employees. Their firms may have an interest in the very cases the suplentes are ruling on. END NOTE.) Some constitutional lawyers disagree with this provision, claiming that it could alter the "internal independency" of the judicial branch. It could also lead subordinate judges to feel intimidated by their absent superiors when ruling. The proposal that Justices be assigned to the Court by law rather than the Constitution didn't pass for fear that a sitting President could pack the court to his/her advantage.

12. (SBU) Article 221 establishes that the Attorney General (AG) and the Solicitor General (SG) will no longer have appointed alternates. The AG and the SG will appoint his/her alternates from within his/her offices to fill in during absences. Some fear that this reform will increase the AG's ability to influence the alternate. Alternates in the past (including the recent past) have rebelled when the principal was absent, in several instances for the better.

Electoral Tribunal gains Independence & Stability

13. (SBU) Reforms approved to Article 137, paragraph 9 would allow the Electoral Tribunal (TE) to prepare its own budget and present it directly to the Legislative Assembly instead of seeking Executive Branch approval. The Comptroller General's Office would audit TE expenditures after the fact. The reforms would also prohibit Supreme Court oversight of electoral matters. (NOTE: The case of legislator Carlos Afu's ejection from the PRD was never resolved after the Supreme Court snatched it away from the TE on questionable grounds. Afu's "defection" to the Arnulfista Party eliminated the basis of the case. END NOTE.) A reformed Article 159 would allow the TE to present bills directly to the Legislative Assembly for consideration rather than through the executive branch. Finally, to avoid all three electoral magistrates leaving simultaneously, the revised constitution stipulates that they be appointed for staggered 10-year terms. To achieve this, when all three magistrates leave in 2006 one new magistrate would be appointed for ten years, another for eight and a third for six. Their successors would be appointed for ten-year terms.

Contempt out and wiretaps in

14. (SBU) The reforms would eliminate Paragraph 1 of Article 33, which allows judges and justices to impose a sanction (either jail or penalties) without trial to anyone they considered has "offended them or shown no respect for them". One outrageous case came to light several years ago when then-Chief Justice Arturo Hoyos sent a lawyer to jail because he considered that the lawyer had "disrespected" him verbally. (COMMENT: This item is similar in spirit to contempt provisions in the US, but capricious application has made it problematic. END COMMENT.) On a related issue, the Arnulfistas were unable to garner PRD votes to support the elimination of criminal charges for libel and slander as that reform fell victim to short-sighted party politicking.

15. (SBU) The current constitution forbids wiretapping; however after passing the anti-money laundering bill in the 1990's, the Attorney General's office has allowed wiretapping in certain cases. Many lawyers and even judges and justices had widely different positions on the practice, ranging from vehement criticism to quiet applause. The reform would allow wiretapping with prior authorization for a specific purpose. If not, information obtained from wiretaps would not be admissible as evidence and whoever eavesdrops on telephone conversations without prior authorization would be subject to criminal charges.

Political parties democratized -- sort of

116. (SBU) One reform would require political parties to have a democratic internal structure and operating procedures. The change reflects Arnulfistas' concern about the way that President Moscoso has imposed her will on the party and PRD criticism of the same. On the other hand, despite the widespread belief that it is a liability to the democratic system, the Assembly maintained the constitutional norm that allows a political party to unseat one of its members from the legislature ("revocatoria de mandato"). (COMMENT: This is a convenient way for large and small parties alike to enforce voting along party lines. Then again, the reformed constitution would allow constituents to "recall" independent legislators under certain conditions. This may discourage independents from running for the Assembly. END COMMENT.)

Reforms with presidential fingerprints

117. (SBU) The first two reforms in the package clearly reflect President Moscoso's and President-Elect Torrijos' personal interests. Article 11 of the Panama's constitution states that foreign adopted children of Panamanian nationals can only become Panamanians when they "reach 18 years and clearly state their wish to keep residing in Panama." The reform would drop the age requirement, which means that Moscoso's 13-year-old son, adopted in Costa Rica, could soon be naturalized. The Reformed Article 19 would prohibit discrimination based on disabilities. President-elect Torrijos' daughter Daniela is a child with special needs.

Comment: Fallout and follow-up

118. (SBU) Despite concerns that a lack of political will (particularly from the Moscoso administration) would stop the reforms, closed-door negotiations once more prevailed to move things along. The PRD and the Arnulfistas (as applicable) may now exalt President-elect Torrijos' "initiative" and trumpet GOP "cooperation." Critics believe that the reforms were not studied carefully and may challenge at least one before the Supreme Court. For instance, the reform to Article 141 that caps the total number of legislators grants a fixed number of seats to the Kuna (2) and Ngobe-Bugle (3) indigenous groups. Since those legislators would represent smaller populations than the others, their influence in the Assembly would be disproportional, allowing 4% of Panama's population to control 7% of its legislators. Their privileged positions would violate Article 19 of Panama's constitution if considered racially discriminatory.

119. (SBU) Civil society has lukewarmly welcomed the establishment of a procedure for calling a Constituent Assembly (Constituyente). The reformed Article 308 of the Constitution would allow a Constituyente to be convoked: (i) by the executive branch (with the approval of the Legislative Assembly), (ii) by a 2/3 Legislative Assembly vote, or (iii) at the petition of 20% of the population age 18 or greater (about 380,000 people) whose signatures were collected within six months. In a six to nine month period, the Constituyente (composed of 60 elected representatives) could reform part or all of the constitution, but not introduce retroactive changes or alter the terms of sitting elected officials. Constituent Assembly reforms would then be submitted to a national referendum. Those who feel that the reform package is not enough are rumored to be waiting for a September ratification by the new Legislative Assembly to start collecting signatures.

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